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BEFORE THE

Federal Communications Commission

JUN 24 1994

WASHINGTON, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
)	
Further Forbearance from)	GN Doc. No. 94-33
Title II Regulation for)	
Certain Types of Commercial)	
Mobile Radio Service Providers)	

COMMENTS OF WATERWAY COMMUNICATIONS SYSTEM, INC.

Waterway Communications System, Inc. (hereinafter referred to as "WATERCOM") respectfully submits its Comments in response to the Notice of Proposed Rulemaking to consider whether the Commission should further forbear from Title II enforcement with regard to particular types of CMRS providers.^{1/}

I. Statement of Interest.

WATERCOM is the licensee of an Automated Maritime Telecommunications System ("AMTS"), licensed under Part 80, Subpart J, of the Commission's rules and regulations. The WATERCOM system, located along the Mississippi, Illinois and Ohio rivers and the Gulf Intracoastal Waterway, provides telecommunication service to the maritime industry operating along the 4,000 mile inland waterway transportation network. WATERCOM renders interconnected telecommunications service to the user public, and its service has been classified as a Commercial Mobile Radio Service (CMRS) by the Commission in

^{1/} 9 FCC Rcd 2164 (1994).

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the Second Report and Order in GN Docket No. 93-252,
Regulatory Treatment of Mobile Services, 9 FCC Rcd 1411,
1448 (1994).

II. Comments.

WATERCOM respectfully urges the Commission to forbear from Title II regulation for Automated Maritime Telecommunications Service providers with regard to Section 226 of the Act, which implements the Telephone Operator Consumer Services Improvement Act of 1990 ("TOCSIA").

Section 332(c)(1)(A) of the Act sets forth a three-pronged test for forbearance. That test entails determinations that (i) enforcement is not necessary in order to ensure that the charges, practices, classifications or regulations for or in connection with the service are just and reasonable and are not unjustly discriminatory; (ii) enforcement is not necessary for the protection of consumers, and (iii) forbearance is consistent with the public interest. The Commission has suggested that parties commenting address how the first and second prongs of the statutory standard that rates are just and reasonable would be met, and with regard to the third prong of the standard whether the cost of compliance would be exceptionally

difficult for the particular class of CMRS provider to bear.^{2/}

A. Operator Services in an AMTS Environment.^{3/}

The demand for and original sponsoring parties of the WATERCOM AMTS were members of the commercial barge and towing industry operating along the inland river transportation network. Since initiation of service in 1987, WATERCOM's prime customer base has been comprised of members of the barge and towing industry. Those customers operate with WATERCOM on a subscriber basis; and accordingly, service to the maritime industry does not fall within the scope of Section 226 of the Act.

WATERCOM's potential exposure to Section 226 of the Communications Act arises by virtue that WATERCOM's telephone units are installed aboard Mississippi River cruise vessels (e.g., the "Delta Queen") and certain dinner/harbor cruise boats for passenger usage. It is

^{2/} NPRM at ¶ 23.

^{3/} WATERCOM is the only AMTS authorized on the inland waterways. By virtue that the Commission reallocated certain AMTS channels to the IVDS, and otherwise has restricted the remaining channels against operation in the vicinity of TV Channel 13, WATERCOM, which was the petitioner for establishment of the automated maritime service, is the only licensee on the Mississippi River and its connecting waterways, including the Gulf Intracoastal Waterway. Other parties have applied for AMTS coastal authority. The status of those systems, and whether those systems, if operational, would render operator services within the context of Section 226 of the Act, is unknown.

service to these transient members of the public, who charge their calls to credit cards, which give rise to WATERCOM's interest in the TOCSIA regulations. *This passenger use of the WATERCOM system is estimated to account for less than 1% of calls through the WATERCOM system.*

B. Enforcement of Section 226 Is Not Necessary to Assure Charges, Practices, Classifications or Regulations are Just, Reasonable and Non-Discriminatory and Is Not Necessary for Consumer Protection.

WATERCOM previously has detailed that TOCSIA was intended to apply to landline public telephone services, not to mobile carriers.^{4/} This point further is illustrated by the Commission's explanation in the instant notice of TOCSIA. The Commission discusses OSPs' failure to identify themselves, charging higher rates than consumers expected and engaging in call-splashing, and aggregators restricting operator-assisted calling to an OSP that the aggregator, not the consumer, chooses.^{5/} The opportunity for these practices to take place flowed from the disaggregation of landline telephone service following the introduction of competition in long distance services and the approval of

^{4/} See, Comments, Apr. 16, 1992, GTE Service Corp. Petition for Declaratory Ruling, MSD 92-14; Petition for Reconsideration of Common Carrier Bureau Order on Petition for Declaratory Ruling that GTE Airfone, et al., are not subject to TOCSIA, filed Sept. 27, 1993; Comments, GN Docket No. 93-252, Nov. 8, 1993.

^{5/} NPRM at ¶¶ 21-22.

private pay phone services. The problems TOCSIA is intended to cure all reflect the failure to satisfy users' expectations arising out of the interjection of a new category of service providers, who are not facilities-based interexchange carriers but rather solely render operator services, into call routing.

The OSP environment addressed in TOCSIA and described in the Commission's notice is far different from the maritime (and general mobile) environment. Fundamentally, the user, being on a vessel, has no previously formed expectation that calls will be handled by any particular carrier, or consistently with a familiar rate structure. Moreover, "call-splashing" is irrelevant in a maritime calling environment since calls are not rated from a particular geographic location. Most significantly, WATERCOM is a facilities-based carrier that provides the essential service link between vessel and shore; and to the extent that WATERCOM is deemed to provide an OSP function to the itinerant user, it does so in order to recover its charges for the radiolink service. As contrasted with the landline environment where there may be a variety of OSPs which the user can reach under an equal access arrangement, there is no neutral network (LEC) to bridge between the user and the OSP; and the user does not have a choice of maritime

carriers as he or she would have a choice among IXC's and OSPs when utilizing the landline network.

Operationally, WATERCOM functions in a much different fashion than landline OSPs. WATERCOM's telephones are clearly identified, either on the telephone unit or on the instruction card in the staterooms of cruise ships. The rates are stated, and in any event are available from the WATERCOM operator. Moreover, the concept of "call-splashing" is irrelevant in a maritime environment since there is no specific geographic location from which the call is rated. With regard to the issue raised by the Commission at n.57 concerning bundling of radiolink and landline toll elements, WATERCOM's schedule of charges provides alternative rates for connection to a landline 800- number, from which a customer can reach his IXC of choice, and for end-to-end service.

Enforcing TOCSIA against Automated Maritime Telecommunications Service providers would be the epitome of futility from the perspective of insuring charges, practices, classifications and regulations are just, reasonable and non-discriminatory. The Commission in its Second Report and Order in GN Docket No. 93-252 conferred tariff forbearance on CMRS providers, including AMTS operators. By that Commission Order, WATERCOM must cancel its tariff effective July 16, 1994. Enforcement of the OSP

regulations would require WATERCOM to maintain an informational tariff for its operator services while no tariff is required or permitted for its basic telecommunications service. Having only one element of a through-service tariffed is wholly meaningless and affords the Commission no opportunity for oversight of rates and practices.^{6/}

WATERCOM is subject to effective constraints assuring that its rates and charges are reasonable. First, WATERCOM's rates and rate structure must be maintained at a reasonable level in order to satisfy the maritime operating industry which comprises 99% of WATERCOM's volume of traffic. To skew the rate structure for the 1% of itinerant traffic which WATERCOM serves would be counterproductive, and wholly irrational. Moreover, the traffic which is the subject of these Comments flows from public access vessels. WATERCOM telephone service is made available as a convenience to passengers by the vessel operators. Were WATERCOM's rates unreasonable, the cruise and other vessel operators would receive customer complaints. Maintaining positive public perception and image are critical to the providers of recreational services; and accordingly,

^{6/} Tariffing operator services but not the underlying basic service is reminiscent of Chevy Chase's report on the "Weekend Update" portion of "Saturday Night Live" of partial baseball scores: "Minnesota, 2."

WATERCOM must be sensitive to assure that it does not create ill will for its host vessel operators. Were the vessel operators dissatisfied with WATERCOM, they could revert to the status quo ante, i.e., no on-board telephone service; or alternatively, they could look to cellular or, more likely, the forthcoming mobile satellite service, as an alternative. As the Commission well recognized in the Competitive Common Carrier rulemaking, the marketplace serves as an efficient regulator of rates and practices; and Commission regulation is appropriate only where the marketplace does not constrain service providers.

C. The Cost of TOCSIA Compliance Cannot Be Recouped.

WATERCOM previously has informed the Commission that retrofitting its network to comply with TOCSIA would cost in excess of \$250,000.^{7/} As hereinbefore noted, less than 1% of WATERCOM's traffic entails calling from itinerant users on cruise ships and other public access vessels. The retrofitting costs far surpass the marginal incremental revenues earned by WATERCOM from serving this category of user.^{8/} Increasing rates for this service to cover TOCSIA

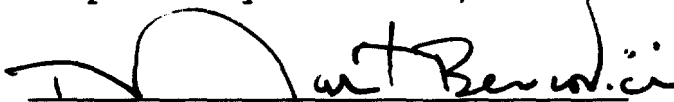
^{7/} Petition for Reconsideration, GTE Petition for Declaratory Ruling, MSD 92-14, at p. 10 (Sept. 27, 1993).

^{8/} Counting each public access vessel as a separate telephone line for equal access purposes, the implementation costs would exceed \$25,000 per line. In contrast, the Commission utilized a \$15.00 per line cost as a benchmark
(continued...)

compliance neither would be acceptable in the marketplace nor consonant with the public interest, convenience and necessity. Considering that the costs of compliance are egregiously disproportionate to the revenues involved, enforcement of TOCSIA would require WATERCOM to abandon its public access service. Considering the alternatives, forbearance from application of Section 226 of the Act to Automated Maritime Telecommunications Service clearly is in the public interest, convenience and necessity.

WHEREFORE, THE PREMISES CONSIDERED, Waterway Communications System, Inc. respectfully urges the Federal Communications Commission to **FORBEAR** from enforcement of Section 226 of the Communications Act with regard to the sub-category of Commercial Mobile Radio Service known as Automated Maritime Telecommunications Service.

Respectfully submitted,



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8/ (...continued)
for determination of equal access requirements in Policies and Rules Concerning Operator Service Access, 6 FCC Rcd 4736, 4742 (1991).